IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1299 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
PREMJIBHAI BHUDARBHAI DABHI

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Appearance :
MR KC SHAH APP for Appellant
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 27/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State against the judgment and order delivered by learned Additional Sessions Judge & Fast Track Court Judge, Modasa, District – Sabarkantha, in Sessions Case No. 46 of 2003, whereby the present respondent came to be acquitted from the charges levelled against him for the offences punishable under Sections 510, 302 and 201 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 Learned APP Mr. K.C. Shah was heard at length at the admission stage.

3 The brief facts discloses that complainant, who is eldest amongst four brothers, gave a complaint before Dhansura Police Station on 19th of October, 2002, stating that they being four brothers and resided separately and deceased in the incident Somabhai was serving as agricultural helper at Uchchhal village, and on 16th of October, 2002, after performing religious rites of “havan” of Dashera, at about 5.00 p.m. in the evening, Somabhai had started to go to village Uchchhal from his village Butal. On 19th of October, 2002, while complainant was proceeding to his agricultural land, he noticed that, in wasteland one deteriorated dead body was lying, that he knew from his fellow villagers, and when he inspected the said dead body, he

found that, the said dead body was of his younger brother Somabhai, who was last seen on 16th of October, 2002 and had gone to Uchchhal from Butal at 5.00 p.m. Thereafter, complainant on the same day informed the Police about this orally. According to the prosecution case thereafter one Somabhai and Kanubhai, native of village Bhutal, met the complainant and conveyed that on 16.10.2002, when Somabhai and Kanubhai were going to pilgrimage, the accused met them, who was frightened and was going in hurry and he told to Somabhai and Kanubhai that he (accused) and deceased Somabhai while sitting on a well, quarrel took place between them. It was further conveyed by this two witnesses to complainant that accused had told them that he (accused) gave a blow with spade on the head of deceased Somabhai and he thereafter had thrown the dead body in the wasteland. A charge sheet came to be filed and prosecution examined eight witnesses and produced on record voluminous documentary evidence. Further statement in this regard of the complainant was recorded by Police on 10.11.2002.

4 The learned Trial Judge after recording the evidence and the further statement of the accused as per Section 313 of the Code of Criminal Procedure and after hearing both the sides, came to the conclusion that the case rested on, firstly, extra judicial confession of the accused as deposed by witnesses Somabhai and Kanubhai, and secondly, the panchnama of the scene of offence, by which

the spade used in the crime was allegedly discovered by the accused. In paragraphs 19 and 20 of the judgment of the Trial Court, the learned Trial Judge noted that the extra judicial confession, as has been disclosed by the two witnesses, inspired no confidence, as the conduct of the witnesses appeared not to be normal, and that, in the version of both the witnesses, who deposed extra judicial confession, is full of contradictions, losing credibility of the extra judicial confession and the panchnama which has been made the base of the prosecution case as circumstantial evidence. Learned Trial Judge noted that even the inquest panchnama, which has been produced on record is not credit-worthy as the clothes on the body of the deceased were not seized by the police, and that, so far as discovery panchnama of the spade is concerned, medical opinion as deposed before the court was clear that there was no injury on the head of the deceased or on the body of the deceased of the spade wound. These are the reasons for the acquittal as given by the learned Trial Judge.

5 Learned APP Mr. K.C. Shah vehemently contended that the circumstantial evidence of panchnama of scene of offence as well as the evidence of witnesses who deposed extra judicial confession at least requires consideration of the matter by this Court.

6 True it is that, this Court has parallel powers in acquittal appeal as has been conferred in appeal against conviction. There is no fetter for this Court to go through the record entirely and if necessary to upset the acquittal. Even then, the appraisal of appeal against acquittal has to be made according to certain settled and celebrated principles of law as laid down by the Apex Court. The principles are well engrafted by the Apex Court in two decisions i.e. (i) in Dwarkadas vs. State of Haryana, as reported in (2002) 1 SCC 2004 and (ii) Kansiram vs. State of UP, as reported in AIR 2001 SC 2902. What we found is, as per the settled legal position, while appreciating the order of acquittal, the court should be slow in interfering with the acquittal order unless the order impugned is absolutely illegal, perverse against the evidence recorded in the matter and when palpably the view taken does not stand to reason by the standard of prudent person. The order of acquittal, normally, should not be reversed merely because from the same evidence, a second view is possible than the view taken by the Trial Court. It becomes the duty of the appellate court to carefully go through the reasoning given for the acquittal by the Trial Judge, and if it is found that those reasons are not tenable, to record its own reasons for not accepting the view taken by the Trail Court. In this exercise, this aspect can be looked into carefully while admitting the matter.

7 In this case, we carefully scanned through the record

as well as the reasoning given by the Trial Judge. One cannot say that the evidence of extra judicial confession is a piece of evidence always to be looked into as not credit-worthy, even if, the whole case is based upon extra judicial confession. The whole crux of the matter is how the prosecution proves the extra judicial confession and whether the credibility of the witnesses, who attempts to prove extra judicial confession, is reliable.

8 Needless it is to say that extra judicial confessions are those confessions which are made by a person elsewhere than before Magistrate or court most probably before a private individual. There is no law that the extra judicial confession requires corroboration and without any corroboration such piece of evidence cannot be believed. The extra judicial confession will have to be proved like any other fact through evidence. It is not a piece of evidence which can be labelled as extra strong or extra weak and, therefore, like any other evidence, the evidence of extra judicial confession will have to be appreciated testing the veracity of the witness to whom the same is made. The reliability of witness who gives the evidence about the extra judicial confession would be the core question, which should be resolved by a court and come to a conclusion. But in any case, it is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. Along with the veracity of the witness, the nature of circumstances attending to fact when confession was

made, shall be relevant factor in each case to be considered by court to place reliance or discard the evidence of extra judicial confession. When extra judicial confession comes from the mouth of a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime, then there is no impediment to place reliance on the evidence of extra judicial confession and base conviction upon the sole evidence of extra judicial confession. Therefore, when judicial conscious is satisfied that an extra judicial confession is voluntary, true and made in fit state of mind by the accused, it must be relied upon. Whether or not the confession was voluntary, it depends upon the facts and circumstances of each case, to be judged in light of the evidence tendered by the prosecution. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt and involuntary confession is one which is not the result of the free will of the maker of it when the statement is made as a result of harassment and continuous interrogation after the person is treated as an offender and accused. Such statements can be regarded as involuntary.

9 We find from the evidence of both the witnesses i.e.

Kanubhai and Somabhai as noted by the learned Trial Judge that what would be a normal human conduct, after hearing that his fellow villager was murdered, whether to proceed for pilgrimage instead of informing family members of the deceased. Even during seven days which elapsed between the incident, and the fact that, both the witnesses conveyed to the complainant about the accused murdered his brother, no attempt is made on their part even to contact any of the family members of the deceased. Not only that, but the way in which both the witnesses have deposed extra judicial confession of the accused before them and the manner in which the accused deposed, we find such contradiction which undoubtedly would shake the credibility of these two witnesses. If the case is based upon extra judicial confession, and then, the extra judicial confession must be proved beyond doubt by credible evidence. The prosecution failed to prove extra judicial confession of the accused before these witnesses beyond doubt and there is no earthly reason to come to the conclusion that these reasonings of the Trial Court are so perverse, that the same requires interference.

10 Like wise, very important aspect of the prosecution case is that the murder is committed by a blow of spade on the head of the deceased, and this is what confessed by the accused before the two witnesses. In this case, medical evidence has been recorded and vide Exhibit-9 Dr. Upadhyay has been examined. It

has been recorded by the Trial Court while dealing with this evidence that it was categoric opinion of the Medical Officer that during postmortem he did not notice any injury on the head of the deceased, which could have been caused by the spade. On the contrary, the Doctor opined that there was no injury on the skull of the deceased. What the Doctor opined was that the death was due to asphyxia, and that too, by way of a possibility as the dead body was deteriorated, the cause of death could not be ascertained with certainty, but the fact remains that there was no injury on the skull of the deceased. Therefore, we have no reason to dissent from the view taken by the Trial Judge, as discussed above.

11 In this view of matter, this Appeal stands summarily dismissed.

(J. R. VORA, J.)

(SHARAD D. DAVE, J.)

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